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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of)

Amendment of Section 73.606)
Table of Allotments)
Television Broadcast Stations)
(Beaumont, TX))
_____)

MM Docket No. _____

RM No. _____

To: Chief, Allocations Branch

AMENDMENT TO PETITION FOR RULE MAKING

Beaumont 21, L.L.C. ("B21"), by its counsel, hereby amends its pending petition for rule making for a new television allotment for Beaumont, TX by substituting NTSC channel 58 for NTSC channel 21 requested in B21's original petition. Thus, B21 proposes to amend Section 73.606 of the Commission's rules as follows:

<u>Channel No.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Beaumont, TX	--	58

I. Background

B21 is filing this amendment to its petition for rule making pursuant to the Commission's Public Notice, 14 FCC Rcd 19559 (1999) ("Window Notice") announcing the opening of a window for the filing of, among other things, amendments to pending petitions for rule making that had sought to amend the TV Table of Allotments to add a new NTSC television allotment. B21 had sought allotment of NTSC channel 21 for Beaumont's first local television service. The Commission cannot go forward with that proposal because the Commission has allocated digital

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channel 21 to Beaumont. As a result, under the Window Notice, B21 was afforded the opportunity to amend its pending petition for rule making to specify a new channel.

B21 has identified NTSC channel 58 for an allotment to Beaumont, TX. The attached Engineering Statement of Pete E. Myrl Warren III of WES, Inc. shows that the proposed allotment protects NTSC channels under 73.623(c). The Engineering Statement also shows that the proposed allocation meets the minimum distance separation requirements to any other NTSC stations and is free of interference to all Class A stations. Finally, the allocation does not cause any interference to any digital stations.

II. The Public Interest Compels Grant of This Petition

B21 seeks to change its proposal for a new allotment to Beaumont, TX, consistent with the Window Notice, so that an additional service to a population of 633,137 persons can be made available. Allotment of NTSC channel 58 will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient, and equitable distribution of television broadcast stations among the various states and communities. See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to “secure the maximum benefits of radio to all the people of the United States”); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to “secure local means of expression”).

In addition, grant of B21’s petition will foster the emergence of a new national television network by establishing an outlet in television market (131). There are only three networks available over the air in the market, and therefore, one of the big four and two emerging networks are under-represented.

In the past, the Commission has relied on these public interest objectives in making new allotments. In Docket No. 13340, Interim Policy on VHF Television Channel Assignments, 21 RR 1695 (1961), recon. denied, 21 RR 1710a (1961) (“Interim Policy”), the Commission instituted a rule making proceeding in an effort to find a means of alleviating the need for additional channel assignments in the larger television markets in order to foster the development of a nationwide competitive television system.

The Commission concluded that the most efficient means of accomplishing its objective would be to permit, under limited circumstances, channel assignments at substandard spacings. **Since this Application is fully spaced it should be considered more favorably in light of the aforementioned practice.** The short-spaced allotments were authorized subject to the requirement that the new stations provide protection to the existing short-spaced stations to assure that they would not receive interference in excess of the amount they otherwise would receive from a co-channel station operating with maximum facilities at full distance separation. The Commission designated ten markets in which such a “squeeze in” procedure would be considered. Many of these proposals, as well as those which arose out of the Commission’s Interim Policy, involved a third commercial VHF allotment in a market that was designed to provide an additional broadcast outlet which was critical to the establishment of a third competitive network. See, e.g., Grand Rapids, Michigan, 21 RR 1737 (1961) (Commission assigned a second VHF channel to Grand Rapids and a third to the Grand Rapids-Kalamazoo market),¹ Rochester, New York, 21 RR 1748a (1961)(same).

¹ In Grand Rapids, the Commission allotted Channel 13 to Grand Rapids, which required the substitution of Channel 9 for Channel 13 at Cadillac, Michigan, and the substitution of channel 7 for a Channel 9 allotment at Alpena, Michigan. Id. at 1745. The Commission’s action was designed to alleviate the “critical shortage of competitively comparable facilities in major markets.

Similarly, in the VHF Drop-In Proceeding, 81 FCC 2d 233 (1980), the Commission granted requests for waiver of Section §73.610 to permit the allotment of new short-spaced VHF assignments to Charleston, West Virginia; Johnstown, Pennsylvania; Salt Lake City, Utah; and Knoxville, Tennessee. Each short-spaced allotment was subject to the condition that the new station provide equivalent protection to the existing station to which it was short-spaced. Id. at 234.

In granting the waiver requests, the Commission recognized that the four VHF drop-ins represented a significant departure from Commission precedent.² Nevertheless, the Commission concluded that the new VHF allotments would serve important public interest objectives such as providing new local service, the promotion of additional networks, and increased competition in advertising markets. The Commission found these to be substantial contributions to the public interest. Id. at 253. Moreover, on reconsideration, the Commission observed that application of the distance separation rules would achieve a result contrary to the public interest by preventing new and needed television services, and that a waiver of the rules would not undermine the policy behind them as set forth in the Sixth Report and Order in Docket Nos. 8736 et. al., Amendment of Section 3.606 of the Commission's Rules and Regulations, 41 FCC 148 (1952) ("Sixth Report and Order").

The public interest benefits that would result from a grant of B21's amended proposal are the same public interest objectives which the Commission sought to foster in the VHF Drop-In Proceedings and the Interim Policy, and yet unlike as in those proceedings, no waiver of the

...” 21 RR at 1745.

² Despite the Commission's Interim Policy, there had been no short-spaced VHF allotments in the continental United States prior to its decision in VHF Top 100 Markets. 81 FCC 2d at 239.

Commission's rules is required in order to grant B21's amended proposal here. The public interest fully supports a grant of B21's amended proposal.

III. Conclusion

Wherefore, Beaumont 21, L.L.C. respectfully requests that as proposed in this amendment to B21's original petition for rule making, the Commission initiate a rule making proceeding to amend Section 73.606 (b) of its rules, the television Table of Allotments to add an allotment for NTSC channel 58 for Beaumont, TX.

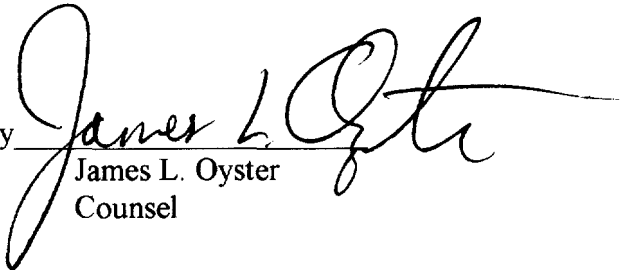
Respectfully submitted,

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July 17, 2000

BEAUMONT 21, L.L.C.

By 
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**ENGINEERING EXHIBIT
PETITION TO MODIFY THE TABLE OF
ALLOTMENTS TO SPECIFY A
DISPLACEMENT CHANNEL TO
SUBSTITUTE FOR BEAUMONT, TX
CHANNEL 21**

July 11, 2000

ENGINEERING STATEMENT

Wes, Inc.

DECLARATION

I, Pete E Myrl Warren, III, declare and state that I am a Certified Broadcast Engineer, by the National Association of Radio and Television Engineers, and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of Wes, Inc., and that the firm has been retained to prepare an engineering statement on behalf of Beaumont 21, L.L.C.

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.



Pete E Myrl Warren, III

Executed on the 11th day of July, 2000

Narrative Statement

I. GENERAL

This engineering report has been prepared on behalf of Beaumont 21, L.L.C. in support of its request for a displacement channel (Channel 58+) for its pending application for Channel 21 in Beaumont, TX (BPCT960724LH).

II. ENGINEERING DISCUSSION

The applicant originally applied for a construction permit for an existing allocation on channel 21 in Beaumont, TX. The applicant is precluded from going on channel 21 due to co-channel digital allotment in Beaumont, TX.

The applicant proposes the following allocation site:

North Latitude: 30° 08' 06"

West Longitude: 93° 57' 01"

It is proposed to amend Section 73.606(b) of the Commission's rules, NTSC Table of Allotments, to allot Channel 58 (734-740 MHz) for the NTSC television operation of Beaumont 21, L.L.C. As is demonstrated below, the proposed Channel 58 NTSC operation at Beaumont, Texas would not cause any harmful interference to any other analog NTSC or DTV station or allotments exceeding the Commission's guidelines. Beaumont, Texas Channel 58 would provide additional service to a population of 633,137 people.

The proposed NTSC Channel 58 has site availability and can operate from the proposed antenna site with 5,000 kW omni-directional ERP and 610 meter Height Above Average Terrain without adversely impacting other TV operations. The proposed Channel 58 would serve all of Beaumont, Texas inside its 80 dBu contour.

Analog NTSC TV Allocation Situation

The attached Exhibit RM-2 demonstrates that Channel 58, Beaumont, Texas is free of any short-spacings to any other NTSC stations.

Class A Situation

A complete study of all Class A LPTV stations has been conducted.
The applicant is free of interference to all Class A stations.

DTV Allocation Situation

The attached Exhibit RM-3 lists all digital allotments that must be considered within 429 kilometers of the proposed rule-making. The applicant has utilized the FCC's own Fortran Longley-Rice program to determine interference to Digital Television stations. The applicant does not cause any interference to any digital stations. The applicant willingly accepts any interference it may receive from any digital station.

III. Summary

The applicant must change channel from Channel 21 in Beaumont, Texas to channel 58 in order to avoid interference to digital television. On channel 58, Beaumont will not cause any interference to any NTSC, Digital, or Class A stations.

**Exhibit RM-1
Beaumont, TX**

July 11, 2000

by WES, Inc. Broadcast Consultants

Spacing study to Digital TV on Beaumont's current channel 21

Study Location:

Beaumont, TX Channel 21

NTSC Study Station, Transmitter Coordinates: 30-8-6 N 93-57-1 W

Study distance: 429 km

*****NTSC TO DTV STUDY RESULTS*****

City of License	ST	Chan	Bearing	Distance	Req. Dist	Diff.
Lake Charles	LA	20	72.16	95.78	88.50	7.28
Jackson	MS	21	55.71	421.65	244.60	177.05
Austin	TX	21	273.27	371.14	244.60	126.54
Beaumont	TX	21	281.37	2.81	244.60	-241.79

Station is short-spaced to 1 stations.

**Exhibit RM-2
Beaumont, TX**

July 11, 2000

by WES, Inc. Broadcast Consultants

Spacing study to NTSC TV on Beaumont's newly proposed channel 58

***** TV CHANNEL SPACING STUDY *****

Job title: Beaumont

Latitude: 30 8 6

Channel: 58

Longitude: 93 57 1

Database file name: tv000117.edx

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
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***** End of channel 58 study *****

**Exhibit RM-3
Beaumont, TX**

July 11, 2000

by WES, Inc. Broadcast Consultants

Spacing study to Digital TV on newly proposed channel 58

Study Location:

Beaumont, TX Channel 58

NTSC Study Station, Transmitter Coordinates: 30-8-6 N 93-57-1 W

Study distance: 429 km

*****NTSC TO DTV STUDY RESULTS*****

City of License	ST	Chan	Bearing	Distance	Req. Dist	Diff.
Beaumont	TX	50	45.35	8.76	<24.1	15.34
Bryan	TX	59	283.04	205.32	88.50	116.82
San Antonio	TX	58	257.06	428.46	244.60	183.86

Station is in the clear!